

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 30, 2007

STATE OF TENNESSEE v. GREGORY L. WHISNANT

Appeal from the Criminal Court for McMinn County
No. 04-274 Carroll Ross, Judge

No. E2006-01107-CCA-R3-CD - Filed May 2, 2007

Convicted by a McMinn County Criminal Court jury of carjacking, a Class B felony, *see* T.C.A. § 39-13-404(a)(2) (2006), and sentenced to 11 years' incarceration in the Department of Correction, the defendant, Gregory Whisnant, appeals and claims that the convicting evidence is legally insufficient. Because the evidence is adequate to meet the legal standard of sufficiency, we affirm the conviction.

Tenn. R. App. P. 3; Judgment of the Criminal Court is Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JERRY L. SMITH, J., joined.

Charles Richard Hughes, Jr., District Public Defender; and William Donaldson, Assistant District Public Defender, for the Appellant, Gregory L. Whisnant.

Robert E. Cooper, Jr., Attorney General & Reporter; Jennifer L. Bledsoe, Assistant Attorney General; and R. Steve Bebb, District Attorney General, for the Appellee, State of Tennessee.

OPINION

Ms. Edith Kay Harris, the victim, testified at trial that she worked as a medical assistant at Athens Regional Medical Center and drove her 2003 Toyota Forerunner to work on June 5, 2004, arriving at 7:30 a.m. She parked in the hospital parking lot in a space that faced away from the building and toward the street. She went to the passenger side door to retrieve her purse and carryall bag; she then "shut the door and locked [her] vehicle." When she had walked "about halfway across" the parking lot, the defendant emerged from the front doors of the hospital, carrying a blanket and a carryall bag.

The victim testified that she encountered the defendant on the sidewalk and realized "he wasn't going to move" to allow her to pass. She testified that as she tried to walk around him, he said, "Give me those keys." When she declined, "the struggle started," and she testified, "He

started pulling me towards my vehicle, and a tug of war was on. He would yank me and I'd literally come off my feet." The victim described a struggle in which she and the defendant moved "all the way down the parking lot . . . almost at my truck." The defendant finally wrested the keys from her.

The defendant used the keys to unlock the victim's Toyota, inserted himself behind the wheel, and backed the vehicle out of the parking space, nearly hitting the victim. The victim ran into the hospital where she enlisted help in calling the police. She testified that the vehicle was worth approximately \$25,000 on June 5, 2004.

Athens Police Detective Fred Schultz testified that he was called to investigate the June 5 incident and that based upon the victim's information, the defendant first confronted the victim at a point 78 feet from the victim's vehicle, and the struggle ended at a point 38 feet from the vehicle. The victim's description of her assailant reminded the detective of an individual he had seen the night before at a gas station located next to the hospital. Detective Schultz testified that the police bulletin publishing the description of the vehicle and the perpetrator resulted in the arrest of the defendant – and discovery of the vehicle – in Alabama.

Detective Schultz introduced into evidence photographs taken on June 8, 2004, that depicted the recovered Toyota Forerunner and its contents, including photographs of two envelopes and a checkbook bearing the defendant's name and Chattanooga address. Officer Schultz also found in the vehicle, and introduced a picture of, an Athens Regional Medical Center admission form bearing the defendant's name and the date June 4, 2004. The detective introduced a photograph of a black Nike visor recovered from the van, and he testified that the visor matched the visor he had seen the man wearing at the gas station on the evening of June 4, 2004. Detective Schultz found the victim's license tag lying on the Toyota's seat.

Additionally, Detective Schultz testified that he interviewed the defendant, who was then in custody in Alabama. The detective introduced the defendant's written statement in which the defendant admitted that, following an automotive accident, he had been treated at Athens Regional Medical Center and was discharged on June 4, 2004. Because he was unsuccessful in obtaining a ride, the defendant spent the night around the gas station and in the hospital lobby. When he noticed a lady standing next to her vehicle in the hospital parking lot, he went into the lobby, picked up his bag and blanket, went toward the lady now on the sidewalk, spoke to her, grabbed her keys, and ran to the vehicle. In his statement, the defendant admitted driving the Toyota to Chattanooga and ultimately to Alabama. He stated that he took the vehicle because he "needed a way back to Chattanooga."

The defendant elected not to testify and presented no evidence in his defense. The jury convicted the defendant of carjacking, and following sentencing, the defendant perfected a timely appeal. His single issue on appeal is whether the evidence is sufficient to support the verdict. Specifically, he claims that the State's evidence failed to establish the elements of the offense of carjacking because the victim was 78 feet away from her vehicle and, accordingly, not in possession of the vehicle when the defendant encountered her.

The standard for an appellate court when reviewing a challenge to the sufficiency of the evidence is “whether, considering the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Reid*, 91 S.W.3d 247, 276 (Tenn. 2002); *see also* Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2791-92 (1979); *State v. Hall*, 8 S.W.3d 593, 599 (Tenn. 1999). Because a verdict of guilt removes the presumption of innocence and imposes a presumption of guilt, the burden shifts to the defendant upon conviction to show why the evidence is insufficient to support the verdict. *See State v. Evans*, 108 S.W.3d 231, 237 (Tenn. 2003); *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). On appeal, the State is entitled to the strongest legitimate view of the *evidence and to all reasonable and legitimate inferences that may be drawn therefrom*. *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000) (emphasis added); *see also Carruthers*, 35 S.W.3d at 558; *Hall*, 8 S.W.3d at 599.

A verdict of guilt by the trier of fact resolves all conflicts in the evidence in favor of the prosecution’s theory. *See State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). “Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court does not re-weigh or re-evaluate the evidence.” *Evans*, 108 S.W.3d at 236 (citing *Bland*, 958 S.W.2d at 659). Nor may this court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. *Evans*, 108 S.W.3d at 236-37.

One commits Class B felony carjacking by intentionally or knowingly taking “a motor vehicle from the possession of another by use of . . . [f]orce or intimidation.” T.C.A. § 39-13-404(a) (2003).

In the light most favorable to the State, the evidence showed that the defendant first observed the victim as she was standing by her vehicle, that he delayed his encounter with her merely to obtain his belongings from the hospital lobby, and that he then immediately confronted the victim and forcibly took her keys. He then drove away in the victim’s vehicle, nearly striking her as he backed out of the parking space.

We hold that this evidence is sufficient for a rational jury to conclude that the defendant took the vehicle from the possession of the victim. “[T]he word possession as used in the carjacking statute includes the taking of the car in the presence of the victim.” *State v. Henry A. Edmondson, Jr.*, No. M2005-01665-CCA-R3-CD, slip op. at 6 (Tenn. Crim. App., Nashville, July 8, 2006) (affirming a conviction of carjacking when “the victim was ‘three cars away’ from her car when the defendant confronted her and demanded her car keys and money”), *app. granted* (Tenn. Nov. 20, 2006).

Accordingly, the judgment of the trial court is affirmed.

JAMES CURWOOD WITT, JR., JUDGE